

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRUCE ALAN HERALD, P.C.,	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	NO. 06-2983
	:	
THOMAS M. BALDWIN and	:	
KATHLEEN M. BALDWIN,	:	
	:	
Defendants.	:	

Diamond, J.

September 8, 2006

MEMORANDUM

Plaintiff, Bruce Alan Herald, P.C., has asked me to remand this case to state court for lack of subject matter jurisdiction. Plaintiff originally filed this complaint in the Chester County Common Pleas Court ; Defendants, Thomas and Kathleen Sullivan, removed to this Court pursuant to 28 U.S.C. § 1441. I grant Plaintiff's motion because I find that the amount in controversy – \$59,265.93 – fails to meet the \$75,000 jurisdictional threshold.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff has sued Defendants under Pennsylvania law for breach of contract, seeking to recover unpaid legal fees. In the alternative, Plaintiff has brought claims for quantum meruit, unjust enrichment, and account, and also requested relief under Pennsylvania's Fraudulent Transfers Act, seeking to undo Defendants' property transfers to the extent necessary to satisfy

Plaintiff's claim for unpaid legal fees. See 12 Pa.C.S. § 5101 et seq. Both in its Complaint and during the parties' August 28, 2006 conference (held on the record), Plaintiff confirmed that it seeks \$59,265.93 in damages, plus pre- and post-judgment interest and costs of suit.

Defendants removed this case pursuant to the Court's diversity jurisdiction. 28 U.S.C. §§ 1332, 1441. Plaintiff is a Pennsylvania professional corporation; Defendants are residents of Florida. Plaintiff contends that because the amount in controversy is less \$75,000, I am required to remand. Defendants respond that the damages exceed \$75,000 if I include either the value of pre-judgment interest or the value to Defendants of the property transfers Plaintiff asks me to enjoin.

DISCUSSION

The law explicitly provides that to sustain diversity jurisdiction, the amount in controversy must exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332. Once a case is removed to federal court, the removing party bears the burden of establishing jurisdiction by a preponderance of the evidence. See Abels v. State Farm Fire & Casualty Co., 770 F.2d 26, 29 (3d Cir. 1985); Irving v. Allstate Indemnity Co., 97 F.Supp.2d 653, 655 (E.D.Pa 2000). "A district court's determination as to the amount in controversy must be based on the plaintiff's complaint at the time the petition for removal was filed." Werwinski v. Ford Motor Co., 286 F.3d 661, 666 (3d Cir. 2002). Significantly, unlike cases originally filed in federal court, there is a strong presumption in removed cases that the plaintiff has not claimed an amount sufficient to confer jurisdiction. Albright v. R.J. Reynolds Tobacco Co., 531 F.2d 132, 136 (3d Cir. 1976). I am required strictly to resolve all doubts in favor of remand. See Boyer v. Snap-on Tools Corp.,

913 F.2d 108, 111 (3d Cir. 1990); Environmental Tectonics Corp. v. Summer Lake International Enterprises Corp., 2002 U.S. Dist. LEXIS 16297, at *4 (E.D.Pa 2002).

A. Inclusion of Pre-judgment Interest

Interest that is an “integral part of the aggregate amount of damages claimed or is itself a principal obligation” may be included in a §1332 “amount in controversy” calculation. Interest that is merely incidental or accessory to the principal amount demanded may not be included. Brainin v. Melikian, 396 F.2d 153, 155 (3d Cir. 1968); Brown v. Webster, 156 U.S. 328, 330 (1895). Defendants argue that because Pennsylvania law allows pre-judgment interest as a matter of right, such interest is an “integral part of contract damages under Pennsylvania law,” and therefore must be included in the §1332 calculation.

Defendants are incorrect. Most Circuits have held that interest incurred by delay in payment is not an “integral” part of a claim, and so is not included in computing the amount in controversy. See Environmental Tectonics Corp. v. Summer Lake International Enterprises Corp., 2002 U.S. Dist. LEXIS 16297, at *7-8 (E.D.Pa 2002). See also State Farm Mut. Auto Ins. v. Narvaez, 149 F.3d 1269, 1271 (10th Cir. 1998); Velez v. Crown Life Ins. Co., 599 F.2d 471, 473 (1st Cir. 1979); Rafter v. Newark Ins. Co., 355 F.2d 185, 186 (2d Cir.), cert. denied, 385 U.S. 828 (1966).

The Third Circuit has implied as much, explaining that Congress excluded interest from the amount in controversy calculation expressly “to prevent the delaying of a suit merely to accumulate the necessary amount for federal jurisdiction.” Brainin, 396 F.2d at 155. In Brainin, the plaintiff sued the defendants for payment of interest that had accrued on a note prior to

maturity. The Court explained that such interest was “integral,” and therefore included in the amount in controversy, because it represented “not a charge for delay in the payment of money, but interest exacted as the agreed upon price for the hire of money insofar as it claims interest at the rate specified in the note during the period before maturity.” Brainin, 396 F.2d at 155. In contrast, the Brainin Court recognized that interest accruing after the maturity of a promissory note was accessory, as it arose solely from delay in payment. Brainin, 396 F.2d at 155.

Here, Defendants allegedly failed to pay legal fees incurred over six years; the interest Plaintiff seeks resulted exclusively from that delay in payment. Accordingly, under the Third Circuit’s reasoning in Brainin, the claim for interest is accessory – not integral – to Plaintiff’s primary claim, and may not be included in the amount in controversy.

Nor is the interest claimed by Plaintiff a “principal obligation” underlying the agreement. Id. The “principal obligation” Plaintiff seeks to recover is legal fees; the claim for interest is entirely dependent on Plaintiff’s entitlement to recovery of those fees.

Accordingly, as the interest sought is neither an “integral” part of Plaintiff’s claim, nor a “principle obligation” on the underlying contract, I conclude that it must be excluded from the amount in controversy computation.

B. Value of Equitable Relief

Defendants also argue that I should include in the amount in controversy the value of the properties allegedly transferred to evade Defendants’ obligations to Plaintiff. They contend that granting the equitable relief Plaintiff seeks as to those properties will cause economic harm to Defendants well in excess of \$75,000.

Unfortunately for Defendants, the Third Circuit has held exactly the opposite: in computing the amount in controversy, the “value” of the equitable relief sought is measured only to the extent it can benefit the plaintiff. See John B. Kelly v. Lehigh Nav. Coal Co., 151 F.2d 743, 747 (3d Cir. 1945); Clayman v. Ford Motor Company, 1998 U.S. Dist. LEXIS 16356, at *5 (E.D.Pa 1998). See also Freeman v. Sports Car Club of America, Inc., 51 F.3d 1358, 1362 (7th Cir. 1995); Burns v. Massachusetts Mut. Life Ins. Co., 820 F.2d 246, 248 (8th Cir. 1987); Kheel v. Port of N.Y. Auth., 457 F.2d 46, 48-49 (2d Cir. 1972), cert. denied, 409 U.S. 983 (1972).

Accordingly, in determining the amount in controversy, I may not consider the economic consequences to Defendants should I grant equitable relief. Rather, that figure is capped by the amount necessary to satisfy a judgment against Defendants. That amount – \$59,265.93 – does not reach the threshold required for diversity jurisdiction.

CONCLUSION

In sum, I find that Defendants have not established that this Court has subject matter jurisdiction here. Accordingly, I remand this action to the Chester County Common Pleas Court. An appropriate Order follows.

BY THE COURT.

Date

Paul S. Diamond, J.

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THOMAS M. BALDWIN and	:	
KATHLEEN M. BALDWIN,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 8th day of September, 2006, given Plaintiff's representation that the damages it seeks do not exceed \$75,000 (exclusive of interest and costs), it is ORDERED that Plaintiff's Motion for Remand is **GRANTED** for the reasons given in the accompanying Memorandum Opinion. This action is **REMANDED** to the Chester County Common Pleas Court for final disposition.

The Clerk's Office shall close this matter for statistical purposes.

AND IT IS SO ORDERED.

/s Paul S. Diamond, J.

Paul S. Diamond, J.